

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 JERRY UVARIUS TOWNSEL,
10 Plaintiff,

11 v.
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TOMAS GAHAN, et al.,
13 Defendants.

CASE NO. C12-1165RAJ
ORDER

14 This matter comes before the court on a Report and Recommendation (“R&R”)
15 from the Honorable Brian A. Tsuchida, United States Magistrate Judge. Dkt. # 39. For
16 the reasons stated herein, the court ADOPTS the R&R, thereby granting Plaintiff’s
17 request for voluntary dismissal. The court directs the clerk to dismiss this action without
18 prejudice.

19 Plaintiff Jerry Townsel, who is incarcerated and appearing pro se, filed this suit
20 alleging that prosecutors in the King County Prosecutor’s office violated his rights in
21 obtaining and releasing his medical records from the King County Jail. He also sued one
22 Jail employee.

23 Defendants answered the complaint and filed a summary judgment motion in
24 which they contended that collateral estoppel, prosecutorial immunity, qualified
25 immunity, and the doctrine expressed in *Heck v. Humphrey*, 512 U.S. 477 (1994)
26 mandated judgment as a matter of law on all of his claims. Plaintiff responded to the
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1 summary judgment motion. Judge Tsuchida stayed discovery pending his decision on the
2 motion.

3 On December 4, Mr. Townsel asked the court to voluntarily dismiss his case
4 without prejudice. He asked to dismiss the case “in the interest of justice and economy of
5 judicial resources.” Dkt. # 36.

6 Defendants responded by demanding that Mr. Townsel (who is proceeding in
7 forma pauperis in this case) either pay more than \$2,000 in attorney fees or agree to
8 dismissal of his case with prejudice.

9 In the R&R, Judge Tsuchida recommends that the court reject Defendants’ request
10 for attorney fees and grant the voluntary dismissal without prejudice.

11 Mr. Townsel received Defendants’ demand for attorney fees before he received
12 the R&R. He filed a motion for extension of time to respond to the demand and asked
13 the court to appoint counsel. He asks that the court consider appointment of counsel
14 before his request for voluntary dismissal, but does not retract his request for voluntary
15 dismissal.

16 Mr. Townsel has no right to court-appointed counsel in this civil case, and the
17 court declines to exercise its discretion to appoint counsel. For at least the reasons stated
18 in Defendants’ summary judgment motion, it does not appear to the court that Mr.
19 Townsel has a viable claim.

20 In a case where a defendant has filed an answer or a motion for summary
21 judgment and does not consent to voluntary dismissal, the court can condition the
22 dismissal on “terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). Here,
23 Defendants’ request for attorney fees or a dismissal with prejudice are not proper terms.
24 The court recognizes the time that Defendants’ counsel invested in defending against Mr.
25 Townsel’s claims. If the court grants Mr. Townsel’s request for dismissal without
26 prejudice, one of two things will happen. Mr. Townsel might choose not to bring his

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1 claim again, in which case the outcome will be no different than if Defendants had
2 prevailed on their summary judgment motion. If, on the other hand, Mr. Townsel refiles
3 his suit, nothing will prevent Defendants from relying on the same summary judgment
4 motion they filed in this case. In either event, Defendants have suffered no prejudice.

5 The court accordingly ADOPTS the R&R (Dkt. # 39), grants Mr. Townsel's
6 request for voluntary dismissal, and directs the court to DISMISS this action without
7 prejudice. The clerk shall give notice of this order to Judge Tsuchida.

8 DATED this 3rd day of January, 2013.

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13 The Honorable Richard A. Jones
14 United States District Court Judge
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